IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9134 OF 2007

Manoj Patil .. Petitioner
Versus
Ramakant H. Kini & Anr. .. Respondents

Mr.Rahul Kate for petitioner
Mr.A.G.Kundlekar for respondent Nos. 1 to 4

CORAM : S.C.DHARMADHIKARI, J.
DATE : 20th December 2007

P.C.

. Heard Mr.Kate for petitioner and Mr.Kundlekar for respondent Nos. 1 to 4.

2. There are cogent and satisfactory reasons assigned for passing a temporary injunction in a mandatory form in the suit instituted by the respondent Nos. 1 to 4 against the present petitioner defendant. The Grampanchayat permission which is relied upon speaks of Gavthan

land. It does not speak of the suit property. In such circumstances, although, armed with a decree in their favour, respondent Nos. 1 to 4 had to institute a suit and claim mandatory relief because, the petitioner defendant was trying to construct a house on their property. Despite construction having been made on the date of the order, the trial court and the lower appellate court had to pass a drastic order because the construction activity was proceeding at a tremendous speed. The construction activity was recent and enough materials were produced along with the decree to show that the petitioner defendant could not substantiate his claim with regard to the property. On the other hand, respondent Nos. 1 to 4 prima facie showed that the construction is recent one and there is nothing to show that the petitioner is in settled possession as contended.

3. The order was challenged before the lower

appellate court and the lower appellate court in para 7 has referred to the Grampanchayat Resolution and decision. It has also referred to the decree in favour of the respondent Nos. 1 to 4. It has also referred to the communication from the Grampanchayat intimating the respondent original plaintiff that there was no structure on the disputed land for last fifteen years. There are no copies of any assessment or other documents evidencing such construction which is the claim. That petitioner was an assessee so also the structure was in existence for number of years is disbelieved. These observations, at prima facie stage being based upon materials produced, cannot be said to be perverse or vitiated by any error apparent so as to call for interference in this Court's equitable and discretionary jurisdiction under Article 227 of Constitution. Petition dismissed.

(S.C.Dharmadhikari, J)